

AWARD

On receipt of this complaint notice was sent to the opposite party, who filed his written statement. On the pleadings of the parties, following issues were framed on 24th July, 1979:—

1. Whether the complaint is maintainable?
2. Whether the management has sold their factory to another? If so, to what effect?
3. Whether there has been a breach of section 33-A of the I.D. Act?
4. Whether the workmen have received all their dues in full and final settlement? If so, to what effect?

And the case was fixed for the evidence of the complainants, who examined Shri Chandrama Parshad and closed their case. Then the case was fixed for the evidence of the management, who examined Shri Ashwani Kumar, Time Keeper, of M/s. Industrial Breathers and closed their case. Arguments were heard. I now, give my finding issuewise:—

ISSUE No:—

The subject matter of the complaint is that the opposite party declared look-out on 17-5-79 and thereby terminated the services of the present workmen and no notice under section 9-A of the I. D. Act was issued by the opposite party to the complainants. The complainants have prayed that the termination of their services were illegal, therefore, order of reinstatement may be passed.

The opposite party replied that the present case was of transfer of ownership and that provision of 25 (FF) had been complied and the complainants had fully received their full and final settlement. They admitted the receipt of notice pay, retrenchment compensation, gratuity, earned leave and wages etc. detained by the opposite party.

WW-I stated that he worked with the respondent management upto 16-5-79. On 17th when all the workmen went to the factory they were informed that the factory had been closed down. There was no notice in Hindi inside the company. No letter was received by them. The factory was still in operation. Ex.W-1 was list of workmen employed by the management at that time. In cross-examination he admitted it correct that all the persons named in W-1 including the complainants had received their full and final payment from the management. He further stated that all the persons named in Ex. W-1 were now employed by M/s. Industrial Breathers.

MW-1 stated that this factory was purchased from M/s Bishwanath Industries, Faridabad. An agreement of sale was Ex. MW-1/A. His company had not taken liability of the previous employees, however fresh employment was given to them.

The learned representative of the complainants argued that this is a case of contravention of section 9-A and 25 (F) by the management. The management had terminated the services of the workmen. Notices were not issued by the management as provided in law and payment was also not made within the stipulated period. Therefore, further argued that the present dispute fell in item number 10 of third schedule and the Industrial Tribunal had power to deal with the present complaint. He cited 1967 II LLJ. page 23. On the other hand the representative for the management argued that this was a simple case of transfer of business and the complaint was misconceived. He cited 1978 II LLJ. pag. 527 and argued that the management had inherent right to close down and sell their business.

I have carefully considered the complaint and arguments adduced by the parties. Section 33-A states "where an employer contravenes the provisions of section 33 during the pendency of proceeding before a Labour Court, Tribunal, or National Tribunal any employee aggrieved etc., etc." Now when we look to section 33 it says during the pendency etc. no employer shall.—

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings, or
- (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal, or otherwise, that workman.

But the present complaint as I have earlier discussed is regarding alleged contravention of section 9-A or 25 (F) which could be the subject matter of a reference to a Tribunal as set out in the third

schedule of the I. D. Act. The fourth schedule contains the conditions of service given in section 9-A of the I. D. Act. Section 33 and section 9-A are two separate sections dealing change in service conditions but the subject-matter is altogether different. The present complaint is under section 33-A but I do not find any contravention of section 33. Therefore, the complaint is not maintainable. This issue is decided accordingly.

ISSUES Nos. 2 TO 5.

As per adverse finding on issue No. 1 these issues need no decision.

As per finding given by me on issue No. 1, I give my award that the workmen are not entitled to any relief.

Dated 5th January, 1981.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 52, dated 7th January, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Departments, Chandigarh, as required under the I. D. Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 20th February, 1981.

No. 9(1)81-8 Lab/1342.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Ballabgarh Primary co-operative Land Development Bank Ltd., Ballabgarh:—

BEFORE SHRI M. C. BHARDWAJ PRESIDING OFFICER INDUSTRIAL
TRIBUNAL HARYANA FARIDABAD

Reference No. 67 of 1978

between

SHRI GOPAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S THE BALLABGARH
PRIMARY CO-OPERATIVE LAND DEVELOPMENT BANK LIMITED BALLABGARH

Present.—

Shri S. R. Gupta, for the workman.

Shri H. R. Dua, for the Management.

AWARD

By order No. ID/FD/610-77/8953 dated 17th February, 1978 the Governor of Haryana referred the following dispute between the management of M/s. The Ballabgarh Primary Co-operative Land Development Bank Limited, Ballabgarh and its workman Shri Gopal Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Gopal Singh was justified and in order ? If not, to what relief is he entitled ~

On receipt of the order of reference notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed on 3rd June, 1978 and the

case was fixed for the evidence of the management. The management was afforded many opportunities but they did not produce any so their case was closed and it was fixed for the evidence of the workman. The representative for the management made a statement that he had no instructions from the management in the case and withdrew from the proceedings but the workman also did not appear and no dispute award was sent to the Government on 21st June, 1980. Then the workman made an application for setting aside *ex parte* award. Notice of this application was sent to the management and the same was received by their manager but none appeared from the management on the date fixed. Therefore, *ex-parte* no dispute award was set aside and evidence of the workman was recorded. The concerned workman stated that he joined his service in August 1976. He was confirmed after putting six months service. But his services were terminated,—vide Ex. W-2. He was not given any compensation or other benefits of service. He also stated that after his termination another peon was employed in his place by the management. According to the evidence the workman had more than one year continuous service at his credit and in such a situation he was entitled to benefit of service as laid down by their Lordships of the Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala in 1980 (1 LLJ page 72).

Believing the unrebutted testimony of the workman that the provisions of law were not complied with, I hold that the termination of services of the workman is unjustified.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated the 27th January, 1981.

Endst. No. 112. dated 30th January, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)-81-8Lab/3815.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Shivalik Card Board Factory, Sonapat:

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 234 of 79.

between

SHRI JAI KARAN SINGH, JAGBIR SINGH AND RAJ PAL SINGH, WORKMEN AND
THE MANAGEMENT OF M/S SHIVALIK CARD BOARD FACTORY, SONEPAT

Present :

Shri Bahadur Yadav for the workmen .

Shri D. C. Gandhi for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID, SPT/123-79/58300, dated 28th December, 1979, under section 10(1)(c) of the I.D. Act for adjudication of dispute existing between the workmen and the management of M/s Shivalik Card Board Factory, Sonapat. The term of the reference was:—

Whether the termination of services of Shri Jai Karan, Jagbir Singh and Raj Pal Singh was justified and in order? If not, to what relief are they entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same on 7th March, 1980. The workmen did not file their claim statement. The management filed the written statement and the case was fixed for filing of the rejoinder and framing of issues on 12th September, 1980. On three four occasions no one appeared on behalf of the workmen. At last on 12th March, 1981 the workmen representative made a statement that the workmen are not interested in pursuing their demands leading to this reference and they are not turn up inspite of his repeated intimation to them. Their authorised representative withdrew himself from appearing in their behalf. As there is no other address of the workmen available on the file nor with their authorised representative on which the workman could be intimated. Under these circumstances I am left with no other alternative except to hold that the workmen have no dispute with the management and if there was any the same must have been settled as the workmen are not interested in pursuing the same. The reference is answered and returned accordingly.

Dated 14th March, 1981.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 847, dated 27th March, 1981

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

The 21st April, 1981

No. 9(1)-81-8Lab/4558.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Laxmi Paints, Modern Industrial Estate, Bahadurgarh, District Rohtak:—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 33 of 1981

between

SHRI ISLOK, WORKMAN AND THE MANAGEMENT OF M/S LAXMI PAINTS, MODERN INDUSTRIAL ESTATE, BAHADURGARH, DISTRICT ROHTAK

Present:—

Shri Rajinder Kumar, for the workman.

Shri M. M. Kaushal for the management.

AWARD

This reference has been referred to this Court by the Hon'ble Governor,—*vide* his order No. ID/RTK/44-81/8488, dated 16th February, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Islok, workman and the management of M/s Laxmi Paints, M.I.R., Bahadurgarh. The term of the reference was:—

Whether the termination of services of Shri Islok was justified and in order? If not, to what relief is he entitled?